FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR.

Second Appeal No. 209/2007
(Indu Baliram Fatale **VERSUS** Baliram Fakruji Fatale **)**

Appeal — District :
Application No. — of 200
Writ petition

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's Orders

Shri S.C.Bhalerao, Advocate for the appellant.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 24th July, 2007.

Heard Shri Bhalerao, the learned counsel for the appellant.

The appellant is the original respondent who is the wife of the petitioner husband who had filed a petition under Section 13(1)(ia)(ib) of the Hindu Marriage Act. The marriage was solemnised on 22.06.1984. The parties resided together for a period of four years. It is the case of the present respondent that the appellant wife left her matrimonial home some time in October-1988 with her brother, never to return. It is further pleaded on behalf of the respondent that though the respondent tried to bring her back, she was not ready to return to the

matrimonial home. The petition was, therefore, filed for dissolution of the marriage on the ground of cruelty as the matrimonial relationship was denied to the petitioner for five years and also on the ground of desertion.

The appellant refused to accept the summons, and therefore, the petition proceeded ex-parte. The respondent examined himself and the trial Court on a perusal of the petition and the evidence tendered by the respondent held that the respondent was entitled to seek a decree of divorce. According to the trial Court, the evidence of the respondent was consistent with the pleadings in the Hindu Marriage Petition.

Since the trial Court had not recorded the reasons for grant of divorce in detail and the matter had proceeded ex-parte against the appellant, the appellant preferred an appeal in the Court of the District Judge, Yavatmal. The first appellate Court, however, by the judgment dated 04.08.2006, dismissed the appeal. The appellate Court elaborately

discussed the issue about the service or non-service of the summons on the appellant and held that the summons were duly served on the appellant and the trial Court had rightly proceeded ex-parte against the appellant. After considering the evidence tendered by the respondent, the first appellate Court further observed that the appellant was herself at fault as she had deserted the respondent and had never contacted him at any point of time. The appellate Court considered the evidence tendered by the husband to hold that the husband had gone to fetch his wife on a number of occasions but, the appellant refused to accompany him to the matrimonial home. Certain other evidence is also discussed by the appellate Court to hold that the appellant had no intention whatsoever to cohabit with the respondent. The appellate Court, therefore, upheld the findings recorded by the trial Court and further held that the trial Court was perfectly justified in proceeding ex-parte against the appellant as the record clearly showed that several summons were issued to the

appellant on various addresses but, the appellant was evading the service of summons. The notice Exh.13 was refused by the appellant. The trial Court, according to the appellate Court, had rightly proceeded ex-parte against the appellant. Thus, having an overall view of the matter, the appellate Court rightly dismissed the appeal filed by the appellant.

There is no fault whatsoever in the findings recorded by the appellate Court. Even otherwise, the parties were married some time in the year 1984 and have been living separately for almost 20 years. This clearly shows that the marriage between the parties has irretrievably broken down.

Since no substantial question of law arises for consideration in this second appeal, the same is dismissed with no order as to costs.

JUDGE

APTE